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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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BS

FILE:

SRC 03 259 52147

Office: TEXAS SERVICE CENTER

Date: DEC 23 2005

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maif Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner operates a public radio station at which the beneficiary is a programming manager/producer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary qualifies for the classification sought, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the

[national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner seeks a waiver “so that [the beneficiary] may continue his nationally important work in the fields of culture, literature and journalism.”

Four witness letters accompany the initial filing of the petition. Dr. W. Todd Groce, executive director of the Georgia Historical Society, states:

[The beneficiary] is highly respected for his use of radio as a medium to educate the public about the history and literary life of our state, region, and nation. Through his many programs, including ones of state-wide interest such as *Georgia Gazette* and others of a more general nature such as *Cover to Cover*, he exposes listeners to the writings of numerous authors and offers them unique opportunities to learn about a wide range of subjects that broaden their understanding of themselves, both individually and collectively.

These benefits are obviously available to Georgians on a daily basis. They are likewise available to audiences far beyond Georgia, both to people who visit our state, listen while they are here, and then take home with them the cultural benefits that [they] have received, and to audiences who never visit Georgia but nevertheless avail themselves of the quality programming for which [the beneficiary] is responsible through the medium of the internet, where Georgia Public Broadcasting’s site features streaming audio and on-line archival programs. . . .

[The beneficiary] has made it possible for the Georgia Historical Society to reach an even wider audience, placing history in the hands of thousands of Americans who might not be able to travel great distances to attend an event in person.

Laura McCarty, vice president of the Georgia Humanities Council, states:

We have collaborated with [the beneficiary] and Georgia Public Radio in the past to foster the radio broadcast of humanities programming, in particular the talks of speakers who have participated in events that we have supported at libraries, colleges and universities, and other college venues around the state.

We have been impressed with the high quality of his interviewing and production skills, and we have particularly appreciated his adaptation of his skills as a literary critic to work in media production and cultural affairs producing. He is a person with many gifts and talents, and as he has applied them to the realm of cultural affairs producing, he has developed unique and enjoyable programs that have served the people of Georgia and beyond. . . .

[T]his fall, he will be developing a series of "Cover to Cover" episodes featuring Georgia authors who will have short stories included in the anthology, *After O'Connor: Stories from Contemporary Georgia*, which we are co-publishing with the University of Georgia Press this fall. . . . These episodes will also be available via the internet, and we are especially pleased that coverage of our publication will be made to an audience beyond Georgia. . . .

His programming is a high quality resource for the state of Georgia and beyond, unique in its combination of interpretive depth and popular appeal.

Dr. Amy Blackmarr of the Georgia Library Association (GLA) states:

I have known [the beneficiary] since 1995, when I became a commentator for the weekly features show *Georgia Gazette*. . . .

[The beneficiary's] acquaintance with a broad range of literary works . . . allows him, or probably compels him, to sidestep that old dull standard, "So, tell us what your book is about," with well informed, penetrating questions that draw out the nervous writer and can produce some surprising results. . . . This is real talent, supported by hard work and a thorough understanding of the business he is in. There is no dead air on [the beneficiary's] show, and I know a number of listeners who never miss it.

[The beneficiary] is so popular, in fact, that it was a natural step for me . . . to invite him to speak at our annual meeting this year as well as hold a session for GLA and Georgia Conference of Media Organizations conference attendees. Considered an authority on southern literary trends because of his work with southern authors and readers over the years, he will be speaking on this subject and others to hundreds of public and school librarians in October [2003]. The regional impact his talk will have will be seen immediately, through a renewed focus on southern culture in libraries all over the state, reaching thousands of children and adults. But the *actual* range of [the beneficiary's] influence is incalculable, for

the literary and cultural awareness he works so hard to cultivate resides in the minds of all who hear him—whether they happen to live in Georgia, drive through Georgia and hear a show he produces, or listen to him on the internet.

(Emphasis in original.) Author Terry Kay states that the beneficiary “is one of the most important literary figures in the state of Georgia and, by extension, in America. Among those few who truly influence literary standard [sic], he is a leading advocate for excellence by his unique insight into the structure and content of meaningful writing.”

On September 24, 2004, the director issued a request for evidence, instructing the petitioner to submit further evidence to meet the standards set forth in *Matter of New York State Dept. of Transportation*. The director observed that the petitioner must establish the national scope of the beneficiary’s work, and that the initial submission focuses heavily on the beneficiary’s impact within Georgia. In response to this notice, the petitioner has submitted additional letters and documents.

Anne Waters, vice president of sales and marketing for John F. Blair, Publisher, in Winston-Salem, North Carolina, states:

As current president of the Publishers Association of the South, a trade organization of mid-size and university presses, I recently had the opportunity to develop a panel of key regional media contacts for our annual fall educational seminars. Since the conference was to be held in Atlanta, one of the largest media markets in our region, I naturally included [the beneficiary] to represent the area’s public-radio faction.

[The beneficiary] has been a stable, unique radio personality in the Southeast since I came to work for John F. Blair, Publisher, as a publicist nine years ago. His relationship with the company goes back even farther than that, however, as he is but one of two interviewers our company president cites as being well prepared when she was promoting her book *Touring the East Tennessee Backroads* in 1993. . . .

Over the years, [the beneficiary] has immersed himself in the literature of the southern United States and beyond. . . . His passion for keeping abreast of outstanding books and authors and his conscientious approach to sharing his finds with public-radio listeners make him outstanding in the field. He is, in short, simply one of the finest author interviewers/book reviewers working in radio today.

Esther Levine, president of Book Atlanta, “work[s] with all the major Publishing Companies to escort their authors when they come to Atlanta to promote their books.” Ms. Levine states that the beneficiary “is a well known and highly sought after interviewer. His unique education, expertise and abilities set him above other radio personalities.”

The petitioner submits a photocopy of the dust jacket for the novel *The Rutherford Cipher* by William Rawlings, Jr., showing that the beneficiary wrote one of several promotional blurbs on the back cover. Media

articles, both print and online, describe the beneficiary's involvement in various activities in Georgia, such as public readings, trade conferences, and speeches at book signings.

The petitioner also submits arguments from counsel. In the denial notice, the director quotes some of these arguments, but dismisses them without discussion. The petitioner's appeal consists, in essence, of a reiteration of these same arguments. Because the director did not address these arguments, we shall consider them here.

Counsel contends that the petitioner's work is national in scope because "the radio and television waves that emanate from Georgia are in fact not limited to the State of Georgia. . . . The programming . . . also naturally transmit[s] into portions of bordering States . . . and beyond." This signal leakage at best makes the petitioner's programming regional rather than strictly statewide in scope.

Counsel correctly observes that the petitioner is part of a national system of public broadcasters, but there is no evidence that other public broadcasting stations carry or relay the beneficiary's programs. If these stations could transmit the beneficiary's programs, but in fact do not do so, then this tends to emphasize the regional nature of the beneficiary's work.

Counsel's strongest claim in this regard concerns Internet broadcasting. Via the World Wide Web, the beneficiary's programs are available, in theory, to anyone with web access. To this extent, the beneficiary's occupation can be said to have national scope. This does not, however, translate to a finding that this particular beneficiary's work has had, or is likely to have, national impact. As noted above, the record is devoid of evidence that the beneficiary's programs actually have attracted significant numbers of listeners outside of Georgia and adjacent areas. The fact that it could, hypothetically, be heard worldwide is of little consequence; the same can be said of millions of web sites.

Speculation about potential range notwithstanding, the petitioner has not shown that the beneficiary's work is known to be of interest outside of authors and literary critics in and near Georgia. Even if we were to presume that a wider appreciation of southern literature is in the interest of the entire United States, rather than only the southern region, the record does not show that a decade or more of activity by the beneficiary has measurably fostered such a wider appreciation. Instead, he broadcasts to a Georgia audience, appears at events in Georgia, and interviews authors from Georgia and neighboring states.

It is obvious that the local literary community regards the beneficiary as an exceptionally skilled and knowledgeable interviewer, who immerses himself in the subject matter rather than simply acting as an announcer who reads scripted questions based on a cursory review of promotional materials. The denial of the benefit sought should not in any way be construed as a dismissal or denigration of the beneficiary's talent or his well-earned local reputation. At the same time, we cannot find that the petitioner has shown that the beneficiary's work has had an impact or influence at a level that can be deemed to be in the national interest. Given the length of time that the beneficiary has pursued these activities, we see no basis to predict confidently that the beneficiary's future work for the petitioner would have nationally significant results.

Many of the materials submitted in support of the materials attest to the beneficiary's exceptional ability in the arts. A plain reading of the statute indicates that exceptional ability is not *prima facie* evidence of eligibility for the waiver; as worded, the statute clearly indicates that aliens of exceptional ability are generally subject to the job offer/labor certification requirement. Thus, attestations regarding the beneficiary's skills, however sincere or well-documented, cannot establish that approval of a waiver would be in the national interest (as opposed to the interest of the beneficiary, the petitioner, or the literary community in Atlanta).

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien advanced-degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.